

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KISHA BARI,

Plaintiff,

- against -

OCEAN GOLD MEDIA LLC

Defendant.

Docket No. 18-cv-05992

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Kisha Bari (“Bari” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Ocean Gold Media LLC (“Ocean Gold” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of political activist Alexandria Ocasio-Cortez, owned and registered by Bari, a New York based professional photographer. Accordingly, Bari seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Bari is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 84-12 35th Avenue, Apt 6i, Jackson Heights, NY 11372.

6. Upon information and belief, Ocean Gold is a domestic limited liability company duly organized and existing under the laws of the State of New York, with a place of business 150-50 14th Rd., Whitestone, NY 11357. Upon information and belief Ocean Gold is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Ocean Gold has owned and operated a website at the URL: <http://queenstribune.com> (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Bari photographed political activist Alexandria Ocasio-Cortez (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Bari is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was first published on June 24, 2018.

10. The Photograph was timely registered with the United States Copyright Office and was given registration number VA 2-114-402, effective July 31, 2018, and titled “20180624_KishaBari_StopSeparation_TornilloTx_36.jpg.” See Exhibit B.

B. Defendant's Infringing Activities

11. On or about June 28, 2018, Ocean Gold ran an article on the Website titled *The People Have Spoken*. See URL <http://queenstribune.com/the-people-have-spoken/>. The

article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit C.

12. Ocean Gold did not license the Photograph from Plaintiff for its article, nor did Ocean Gold have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Ocean Gold infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Ocean Gold is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).
19. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Ocean Gold be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
January 16, 2019

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